

REMARKS

I. Rejoinder Of Groups II & III

The Applicants gratefully acknowledge that the Examiner has rejoined Groups II & III in the present Office Action and confirm that Claims 1-18 and 21 are now pending for examination. Consequently, the Applicants have modified the status identifiers of the affected claims from "Withdrawn" to "Original". Further, the Applicants have reamended Claims 8, 9 and 13 as dependent from Claim 7 as recited in the original claim set.

II. Species Elections

The Examiner states that the claims now require species elections due to an alleged lack of unity of invention as a consequence of the above rejoinder of Groups II & III. *Office Action pg 2*. These proposed species elections can be summarized as follows:

In Claims 5 & 10, a species election is required as to a portion of SEQ ID NO: 93 from a properly constructed Markush group.

In Claim 8, a species election is required to an encoded protein from a properly constructed Markush group.

In Claim 9, a species election is required to a promoter sequence from a properly constructed Markush group.

In Claim 16, a species election is required to a host cell species from a properly constructed Markush group that also limits Claim 15.

The Examiner is reminded that PTO decisions are reviewed using the standard set forth in the *Administrative Procedure Act*, 5 U.S.C. § 706. *Dickinson v. Zurko*, 527 U.S. 150, 154 (1999). Under that statute, actions are set aside that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Moreover, factual findings are set aside that are unsupported by substantial evidence. *In re McDaniel*, 293 F.3d 1379, 1382 (Fed. Cir. 2002).

The Applicants traverse these species elections for the reasons presented below.

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² This reference is not included. If the Examiner requires this reference, we will seek to obtain it.

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³ This reference was cited in the application as a general text book without any direction to the page(s) and therefore no excerpts are included in the PTO 1449.

⁴ This reference was cited in the application as a general text book without any direction to the page(s) and therefore no excerpts are included in the PTO 1449.

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⁵ This reference was cited in the application as a general text book without any direction to the page(s) and therefore no excerpts are included in the PTO 1449.

⁶ This reference was cited in the application as a general text book without any direction to the page(s) and therefore no excerpts are included in the PTO 1449.

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⁹ This reference was cited in the application as a general text book without any direction to the page(s) and therefore no excerpts are included in the PTO 1449.

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¹¹ Applicant has been unable to obtain a copy of this reference, if the Examiner request a copy we will try to obtain one.

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Applicants have become aware of the following documents which may be material to the examination of the above-identified application:

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This Information Disclosure Statement under 37 C.F.R. §§ 1.56 and 1.97 is not to be construed as a representation that a search has been made, that additional information material to the examination of this application does not exist, or that any one or more of these citations constitutes prior art.

Dated: January 22, 2007



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